

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
NORTHERN DIVISION**

**WAYLEN JOHNSON, ET. AL.,**

**Plaintiffs,**

**vs.**

**MICHAEL E. KELLY, ET. AL.,**

**Defendants.**

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**Case No. 2:07CV16SNL**

**MEMORANDUM AND ORDER**

Plaintiffs have filed this lawsuit asserting claims of breach of contract, violation of federal and state securities laws, and fraud arising from the sale of “Universal Leases”.<sup>1</sup> This matter is before the Court on defendant Kelly’s motion to stay civil proceeding pending completion of criminal proceedings (#10), filed May 22, 2007. Responsive pleadings have been filed.

Defendant Kelly is also currently a defendant in a criminal matter currently pending in the United States District Court for the Northern District of Illinois, Eastern Division.<sup>2</sup> The criminal indictment was filed against Kelly on or about December 22, 2006. Shortly thereafter, he was apprehended in Mexico, and is presently incarcerated awaiting trial. Plaintiffs filed this civil action on or about March 12, 2007. Defendant Kelly seeks a stay of the civil action until such time the criminal prosecution is resolved. He believes that due to the similarity of the allegations contained in the criminal indictment and the civil complaint, his Fifth Amendment rights are implicated. He opines that his Fifth Amendment rights may be jeopardized by on-going discovery in this civil

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<sup>1</sup>“Universal Leases” evidently are timeshares in Mexican hotels sold to individuals.

<sup>2</sup>See, United States v. Kelly, Case No. 06CR0964.

case. He contends that since the subject matter of both the criminal case and the civil case are the same, any civil discovery may not only directly incriminate him but “would furnish a link in the chain of evidence needed to prosecute” him for the federal crime for which he is charged.

Contrary to the plaintiffs’ assertions, upon review of the parties’ pleadings, including the civil complaint and the criminal complaint, the Court finds the subject matter of both to be the same; thus, defendant Kelly’s assertion of his Fifth Amendment rights are not merely “speculative”. His rights, as they pertain to the criminal prosecution, must be protected. However, the Court is also mindful of the plaintiffs’ rights to litigate this action in a timely manner. Therefore, the Court will stay the civil action for four (4) months from the date of this order; or until such time defendant Kelly’s criminal prosecution is resolved (either by a jury verdict or a guilty plea being entered), whichever occurs first.

Accordingly,

**IT IS HEREBY ORDERED** that defendant Kelly’s motion to stay civil proceeding (#10), filed May 22, 2007 be and is **GRANTED IN PART** and **DENIED IN PART**. All proceedings against defendant Michael E. Kelly in Cause No.2:07CV16SNL shall be stayed for four (4) months from the date of this order; or until defendant Kelly’s criminal prosecution in Case No. 06CR964 in the United States District Court for the Northern District of Illinois, Eastern Division is resolved (either by a jury verdict or a guilty plea being entered), whichever occurs first.

Dated this 6th day of June, 2007.

  
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SENIOR UNITED STATES DISTRICT JUDGE

